CROSS-AGENCY TRANSITION TEAM WHITE PAPER

SUBJECT: Small Business Innovative Research & Small Business Technology Transfer Funding (SBIR/STTR)

Issue

The NASA FY 2010 Appropriations Bill provides that NASA's Cross-Agency Support Funds (CASX) are limited to a one-year period of availability and will expire on September 30, 2010. This paper addresses the requirements for Small Business Innovative Research (SBIR) & Small Business Technology Transfer (STTR) funding.

While SBIR/STTR's may have historically been funded differently at each Center, the following determination methods should be adhered to by all Centers.

Guidance

Phase I and Phase II SBIR' generally are nonseverable research activities; that is, the work performed is of a research or technology development nature and the deliverable is the final results in the form of a report, test results, or technology demonstration. However, Centers should not make a blanket determination that; all SBIR/STTR contracts are by nature "nonseverable". Instead, the Center must review the work and deliverables required, and exercise judgment as to whether the work is severable or nonseverable. For work that is determined to be severable, PY10 CAS or other funds available for obligation in FY10) funding should be used to fund these through September 30, 2010.

For work that is determined to be nonseverable, the task should be funded entirely out of the appropriation current at the time of award.

Some confusion has surrounded the NASA FAR Supplement (NFS) class deviation allowing incremental funding on SBIR contracts, The NFS at 1832.702-70(g) permits class deviation to fund incrementally SBIR/STTR Phase II contracts, but this deviation still requires compliance with the Bona Fide Needs Rule. If the work is determined to be nonseverable and the work is a Bona Fide Need of FY 10 (begun in FY10), then the contract may only be funded with funds that are available for obligation in FY10, although it may be incrementally funded during that period (FY10). In this case it must also be fully funded by the end of FY10. On the other hand, if the work is determined to be severable, the portion of work performed in FY10 must be funded with funds available for obligation in FY10, and the work performed in FY11 must be funded with funds available for obligation in FY11.

Special Note: Although these white papers provide general guidance on the application of the Bona Fide Needs rule to common situations, you should still review your specific circumstances with local procurement, finance, and legal specialists. GAO has repeatedly emphasized that what constitutes a bona fide need of a particular fiscal year depends largely on the facts and circumstances of each particular case. Also note that while this guidance was developed to address the issues arising from the change to a one-year appropriation for CAS, it is also applicable to other expiring appropriations.